

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1593 CS

Cybercrime

**SPONSOR(S):** Barreiro

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2322

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N</u>	<u>Ferguson</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>6 Y, 0 N</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Ferguson</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 1593 creates s. 16.61, F.S., establishing a Cybercrime Office (office) in the Department of Legal Affairs within the Office of the Attorney General. This office is authorized to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data.

This bill provides the law enforcement officers with the authority to conduct criminal investigations, execute search warrants, bear arms and make arrests related to cybercrimes.

The bill would increase workload for the Department of Legal Affairs, but the department indicates that it has the necessary investigative positions in place to accommodate the increased workload.

This act shall take effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

According to the Attorney General's website<sup>1</sup>:

In 2005, Attorney General Charlie Crist established a Cybercrime Unit to expand programs to further safeguard children from predatory criminals. The Unit includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children.

The Cybercrime Unit is dedicated to investigating and prosecuting any crime perpetrated or substantially facilitated using a computer, the Internet, digital media, cellular phone, personal digital assistant (PDA), or any other electronic device. The investigators and the prosecutors in the Unit are specially trained in current technologies, tactics, and the law, and share their expertise through educational programs and community awareness efforts.

Through the Cybercrime Unit, the Attorney General encourages extensive cooperative efforts with federal and state prosecutors, the Florida Department of Law Enforcement (FDLE), the NetSmartz Workshop, the National Center for Missing and Exploited Children (NCMEC), other Attorneys General, and all Florida law enforcement agencies.

The Cybercrime Unit is not currently referenced in Florida Statutes. For fiscal year 2005-2006, the Legislature funded 4 positions (3 investigators and one senior assistant attorney) for this cybercrime unit from the Legal Affairs Revolving Trust Fund<sup>2</sup>.

##### **Effect of Bill**

HB 1593 creates s. 16.61, F.S., to provide a Cybercrime Office (office) in the Department of Legal Affairs within the Office of the Attorney General. Essentially, this bill will codify the Cybercrime unit Attorney General Charlie Crist established in 2005.

This bill will authorize the office to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data. Violators of this bill will be prosecuted by the Statewide Prosecutor if the offense occurs in more than one judicial circuit; otherwise, the State Attorney in their respective circuit in conjunction with the Statewide Prosecutor will prosecute the offender.

This bill also provides that:

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<sup>1</sup> <http://myfloridalegal.com/>

<sup>2</sup> According to staff on the Senate Justice Appropriations Committee, the total appropriation was \$416,030 (\$72,683 of which was non-recurring).

- Investigators employed by the Cybercrime office who are certified in accordance with s. 943.1395, F.S., are law enforcement officers of the state who shall have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state.<sup>3</sup>
- In carrying out the duties and responsibilities of this section, the Attorney General, or any duly designated employee, is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S.<sup>4</sup>
- The Attorney General, or any duly designated employee, shall provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime office.

C. SECTION DIRECTORY:

Section 1. Creates s. 16.61, F.S., the Cybercrime office.

Section 2. Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There is increased workload associated with the new responsibilities. The Legislature, however, established 4 FTE and provided \$411,350 for the Cybercrime office during FY 2005-06. Funding for the Cybercrime office is continued in the House proposed General Appropriations Act for FY 2006-07. This bill makes the investigators sworn law enforcement which will move them from regular retirement to special risk.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

<sup>3</sup> According to staff in the Office of the Attorney General, investigators in the Cybercrime Unit are certified law enforcement officers. They are authorized to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state. The bill specifically codifies this authority.

<sup>4</sup> According to staff in the Office of the Attorney General, the Attorney General and the referenced “duly designated employee” are authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S. The bill specifically codifies this authority.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 18, 2006, the Justice Council adopted a strike-all amendment to HB 1593. The strike-all amendment conforms technical language, clarifies a statutory reference, and provides an effective date.

This analysis has been revised to reflect the strike-all amendment.